Electric By Miller, Inc. *and* International Brotherhood of Electrical Workers, Local 584, Affiliated with International Brotherhood of Electrical Workers, AFL–CIO. Case 17–CA–22667(E)

September 30, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On June 2, 2005, Administrative Law Judge George Carson II issued the attached supplemental decision. The Applicant filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge.

Dated, Washington, D.C. September 30, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Charles T. Hoskin, Jr., Esq., for the General Counsel.
Donald W. Jones, Esq., for the Respondent/Applicant.

[1] In adopting the judge's denial of the application for attorney's fees and expenses with regard to the dismissed allegations, we find, for the reasons set for by the judge, that even assuming the dismissed allegations were a substantial and discrete part of the underlying case, those allegations were substantially justified.

SUPPLEMENTAL DECISION

EQUAL ACCESS TO JUSTICE ACT

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. Pursuant to the Equal Access to Justice Act (EAJA), Pub. L. 96-481, 94 Stat. 2325, 5 U.S.C. § 504, and Section 102.143 of the Board's Rules and Regulations, the Respondent timely filed an application for fees and other expenses in this matter on March 17, 2005, accompanied by a motion to withhold confidential financial information from public disclosure.[1] On March 22, 2005, the Board issued a corrected Order referring the application to me for appropriate action. On April 15, 2005, counsel for the General Counsel filed a motion to dismiss in which he argues that the Respondent is not entitled to an award regarding complaint allegations that were withdrawn by an amendment to the complaint and that the General Counsel's position regarding the remaining allegations was substantially justified. On April 22, 2005, the Respondent filed a corrected opposition to the motion to dismiss.

On May 2, 2005, I issued an Order to Show Cause as to why the motion to dismiss should not be denied for failure to present evidence in support of the assertions that the General Counsel's position was substantially justified with regard to the allegations that were withdrawn prior to hearing. On May 10, 2005, the General Counsel presented affidavits and a letter from alleged discriminatee Travis Jelik and argued that the affidavits established substantial justification for the position of the General Counsel until receipt of the letter dated July 25, 2004, in which Jelik stated that he would not cooperate in the prosecution of the case. On May 17, 2005, the Respondent filed a reply to the foregoing submission.

The EAJA provides that attorney fees may be awarded to eligible parties who prevail in cases tried before administrative agencies unless the Government establishes that its litigation position was "substantially justified." The Supreme Court, in *Pierce v. Underwood*, 487 U.S. 552 (1988), stated that "substantially justified" means "justified to a degree that could satisfy a reasonable person" or as having a "reasonable basis both in fact and law." The Respondent contends in its application, in its opposition to the motion to dismiss, and in its reply to the submission of the General Counsel pursuant to the Order to Show Cause that the General Counsel's position in *Electric by Miller*, 344 NLRB No. 20 (2005), was not substantially justified with regard to the allegations that were amended out of the complaint prior to the hearing and the allegations of the complaint that I recommended, and the Board agreed, should dismissed.

[1] The confidential financial information is sealed and attached to the Respondent's application as Exh. A. An itemization of fees and expenses is attached as Exh. B. The Respondent has amended its fee request to conform to the maximum $125 permitted by the EAJA, but which exceeds the $75 per hour prescribed by Sec. 102.145(b) of the Board's Rules and Regulations.

I. BACKGROUND

Before addressing the substantial justification issue, a brief summary of the underlying proceeding is appropriate. Following receipt of a letter dated July 25, 2004, from alleged discriminatee Travis Jelik in which he stated that he would not testify, the General Counsel, on August 13, 2004, a month and a day prior to the commencement of the hearing, amended the complaint by withdrawing three Section 8(a)(1) allegations and paragraph 7 of the complaint which alleged that Jelik had been constructively discharged on February 13, 2004, in violation of Section 8(a)(3) of the Act. The remaining allegations were litigated on September 14, 2004.

The Company, a nonunion contractor, is owned by President Kathy Miller. On December 13, 2003, Miller hired Mike Harrell as Operations Manager. John R. Carter sought and obtained permission from Local 584, International Brotherhood of Electrical Workers, the Union, to seek work with this nonunion Company, and he was hired on December 31, 2003. The alleged unfair labor practices that were litigated all occurred during the last week of Carter's employment, which ended January 16, 2004, shortly after Carter put the Union in touch with the apprentices that were employed by the Respondent. On January 16, 2004, Miller met with Union Organizer Roger Canada. I found that, although the Union did have an organizational objective, Canada did not demand immediate recognition nor did he request that Miller sign anything on January 16. Id., JD slip op. at 4. I found, as alleged in the complaint, that the Respondent, by Miller, violated the Act by threatening closure of the business if the employees selected the Union as their collective-bargaining representative, falsely announcing closure of the business in order to discharge an employee, Carter, and discharging Carter because of his union activities. I found that the allegation that selection of the Union as the employees' collective-bargaining representative would be futile was subsumed in the more serious hallmark violation of the threat of closure and that an allegation of interrogation should be dismissed because, under the circumstances, it was not coercive. I recommended, and the Board agreed, that subparagraphs 6(a) and (b) of the complaint alleging the refusal to hire Brent Sloan and the revocation of employee Carter's cellular telephone privileges be dismissed. Id., JD slip op. at 5–6.

II. DISCUSSION

A. The Withdrawn Allegations

The Board considers a respondent to be a prevailing party when complaint allegations are withdrawn. See *Shrewsbury Motors*, 281 NLRB 486, 487 (1986), *Dake Structural & Rebar Co.*, 293 NLRB 649, 651 fn. 6 (1989). Nevertheless, no fees and expenses are allowed when the General Counsel's initial position is substantially justified and the General Counsel acts "with due diligence to withdraw the complaint" at the point that further proceedings are no longer justified. *Best Bread Co.*, 276 NLRB 1298 fn. 1 (1985). In *B. J. Heating & Air, Inc.*, 273 NLRB 329, 332 (1984), complaint allegations were withdrawn when witnesses failed to appear at trial. The Board held that the position of the General Counsel was substantially justified up until that point.

With regard to the withdrawal of the Section 8(a)(3) allegation that employee Travis Jelik was constructively discharged and Section 8(a)(1) allegations relating to solicitation of information to justify a discriminatory termination, solicitation to revoke union authorization cards, and instruction to provide false testimony to the Board, the General Counsel relied upon an affidavit signed by Jelik on April 8, 2004. In a prior affidavit taken on February 2, and signed on February 3, 2004, in Case 17–CB–5911, Jelik had stated that he and the other apprentice asked Owner Kathy Miller "if she would type . . . letters" to the Union stating that they "wanted no part of the Union." In his April 8, 2004 affidavit Jelik stated that Miller was present when he was giving the February affidavit and that he "did not feel I could be completely truthful." In the April 8, 2004 affidavit Jelik states that he did not ask Miller to prepare a request to withdraw his union authorization card, rather she "typed the letter and brought it to me to sign." The letter requested the Union to "disregard the card I signed." Jelik's April 8, 2004 affidavit also stated that Owner Kathy Miller told him that "she fired Harrell and Carter because they supported the Union" and "had told them she was going to close the business . . . [but] she was not going to." She asked Jelik "if I had any more dirt on them [Harrell and Carter] so she could have other excuses for firing them." In late February 2004, after he had quit, the affidavit reports that Miller informed Jelik that someone from the Labor Board was going to call him and that he should "continue to tell them what I had said in my first statement." Jelik's affidavit states that he quit on February 13, 2004, because the Company "was unstable and I did not know if my job would continue to be there, I had three bosses in the short amount of time I worked there, and because I felt pressure from Miller to withdraw my union card and lie to the Labor Board."

By letter dated July 25, 2004, postmarked on July 29, 2004, Jelik wrote to the Regional Office stating that he was "not ok with testifying against Kathy Miller." He noted that she was aware that he had a prior criminal record. It concludes with the statement, "Kathy [Miller] is capable of terrible things, I don't want any part of her wrath."

The Respondent argues that the General Counsel's position was not substantially justified citing, among other factors, Jelik's admission of a prior conviction. That fact was stated in the July 25, 2004 letter contemporaneously with his statement that he was "not ok with testifying against Kathy Miller." The Respondent assails the investigation by the Region and asserts that Owner Miller was not confronted "about the alleged facts stated in the latest affidavit of Jelik." Miller was represented by counsel and the record does not reflect whether Miller was made available for an affidavit in this case, Case 17–CA–22667. Miller had, in an affidavit she submitted in Case 17–CB–5911 dated February 3, 2004, stated that Jelik and the other apprentice had requested that she type the letter to the Union. Jelik's affidavit of April 8, 2004, repudiated his February 3, 2004 affidavit and contradicted Miller's statement. Thus, a testimonial credibility conflict existed. When credibility cannot be determined on the basis of documentary evidence, those issues must be determined "at a hearing before an administrative law judge." *National Fire Protection*, 281 NLRB 624 fn. 1 (1986).

The General Counsel, citing *Intercon I (Zescom)*, 333 NLRB 223 (2001), argues that the allegation of a constructive discharge was substantially justified because Jelik was presented with a Hobson's Choice of lying to Board representatives and disavowing his union activities or being discharged. Although Jelik stated in the April 8, 2004 affidavit that he "did not feel" that he could be "completely truthful" when giving his February 3, 2004 affidavit because Miller was present, he does not claim that Miller, prior to his quitting, told him to be untruthful. The request that he "continue to tell them what I had said in my first statement" occurred after he quit. Jelik's April 8, 2004 affidavit does cite affirmative acts, Miller's admission to him that she terminated Harrell and Carter because they supported the Union and her presentation to him of the letter requesting the Union to disregard the card that he signed, that, if credited, objectively establish that support of the Union was incompatible with continued employment by the Respondent.

The Respondent, citing the dissent of Member Hurtgen in *Intercon I (Zescom)*, argues that Jelik was not given a "clear and unequivocal presentation of a choice" to abandon the Union or abandon his job. The Board majority in that case, Chairman Truesdale and Member Liebman, pointed out that "[a] constructive discharge is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surround it. Such situations may arise when an employer confronts an employee with the Hobson's Choice of either continuing to work or foregoing rights protected by the Act." Ibid. The Board majority acknowledged that, although the respondent "did not literally state that . . . [the employee] had to abandon her support for the Union as a condition of her continued employment, . . . the Respondent's message was unmistakable." Id at 224. The evidence in the possession of the General Counsel herein was consistent with a similar unmistakable message. Miller had informed Jelik that she had fired Harrell and Carter because they supported the Union by falsely telling them that she was closing the Company. She presented him with a letter which requested that the Union "disregard the card I signed." Jelik signed the letter that Miller presented him. The facts in the possession of the General Counsel established that Jelik was presented with the Hobson's Choice of "either continuing to work or foregoing rights protected by the Act."

The evidence in the possession of the General Counsel, Jelik's affidavit of April 8, 2004, revealed that, although Jelik initially chose to continue to work when presented the foregoing Hobson's Choice, he quit on February 13, because of the instability of the Company and because he felt pressure to withdraw his union card and lie to the Labor Board. It is well established that an employer violates the Act when it informs employees that union affiliation is incompatible with their continued employment. *Ryder Truck Rental*, 318 NLRB 1092, 1094–1095 (1995). Board precedent establishes that an employer may not force employees "to work under illegally imposed conditions or to quit their employment" and that employees who quit when confronted with such a requirement have been constructively discharged. *Superior Sprinkler, Inc.*, 227 NLRB 204, 210 (1976).

The evidence that the General Counsel expected to adduce provided a reasonable basis for the constructive discharge allegation on both the facts and the law. Although Jelik signed the letter revoking his union card, he thereafter quit, stating in his affidavit, among other reasons, pressure to withdraw his union card. Case law does not establish that an employee who initially chooses to continue to work when confronted with the Hobson's Choice of continuing to work or foregoing rights protected by the Act but who thereafter chooses to quit is not protected by the Act. In *Indianapolis Mack Sales*, the Board affirmed the administrative law judge's discussion of substantial justification in which she set out the following language from *Lion Uniform*, 285 NLRB 249, 254 fn. 33 (1987):

> The General Counsel will be found to have acted with substantial justification in issuing a complaint whenever the General Counsel possesses, at the time the complaint is issued, evidence that could reasonably lead an administrative law judge to find a violation and does not possess evidence that clearly would defeat an allegation that the charged party has violated the law.

I find that the General Counsel possessed evidence that could "reasonably lead" to the finding of a violation at the time it issued the initial complaint herein. Even if it were to be argued that an employee's delayed decision not to give up Section 7 rights was a novel issue, the Board, in *Teamsters Local 741 (A.B.F. Freight)*, 321 NLRB 886, 890 (1996), held:

> The General Counsel may carry its burden of proving that its position was substantially justified "by showing its position advanced 'a novel but credible extension or interpretation of the law.' " *Timms v. U.S.*, 742 F.2d 489, 492 (9th Cir. 1984), quoting *Hoang Ha v. Schweiker*, 707 F.2d 1104, 1106 (9th Cir. 1983).

Thus, even if it were to be determined that Jelik's quitting after initially agreeing to forego his right to be involved with the Union as evidenced by the letter he signed was a novel issue, I would find that the position of the General Counsel was consistent with a "credible . . . interpretation of the law" and was substantially justified.

Jelik's April 8, 2004 affidavit provided substantial justification for the 8(a)(1) and (3) allegations that would have been established if Jelik testified consistently with the statements set out in that affidavit. Jelik's July 25 letter is postmarked July 29, 2004. Given his unwillingness to testify, the Region obtained an amended charge on August 11, 2004, and amended the complaint by withdrawing the allegations that were dependent upon Jelik's testimony on August 13, 2004. I find that the General Counsel acted with due diligence in withdrawing the allegations within two weeks of its receipt of notification of Jelik's unwillingness to testify and a month and a day prior to the scheduled hearing. *Best Bread Co.*, supra at fn. 1.

B. The Dismissed Allegations

Where the General Counsel's position as a whole is substantially justified at a particular stage of the litigation, no EAJA fees for that stage will he awarded, even if certain allegations, considered individually, were not substantially justified at that stage. The Board's rules implementing EAJA specify that an eligible respondent who prevails in a Board proceeding, "or in a

significant and discrete substantive portion of that proceeding," may be awarded EAJA fees. NLRB Rules and Regulations Section 102.143(b). In *Glesby Wholesale, Inc.*, 340 NLRB 1059, 1060 (2003), the Board pointed out:

> For the purpose of deciding whether the bringing of a case was substantially justified, "[w]hile the parties' postures on individual matters may be more or less justified, the EAJA ... favors treating a case as an inclusive whole *rather than as atomized line-items.*" *Commissioner, INS v. Jean*, 496 U.S. 154, 161–162 (1990), *C. Factotum, Inc.*, 337 NLRB 1 (2001). Accordingly, the Board does not award EAJA fees for individual complaint allegations upon which an applicant prevails. Rather, the Board determines whether the allegations as "an inclusive whole" were substantially justified. [Emphasis added.]

My recommended dismissal of certain discrete allegations that were litigated, with which the Board concurred, did not alter my overall finding that the Respondent's actions were motivated by its antiunion animus. Nor did my recommended dismissal of those discrete allegations establish that the position of the General Counsel was not substantially justified.

Notwithstanding the foregoing, I shall address the Respondent's arguments concerning the discrete allegations that I dismissed and upon which the Respondent asserts the position of the General Counsel was not substantially justified.

Regarding the interrogation allegation, pursuant to the decision of the Board in *Rossmore House*, 269 NLRB 1176 (1984), a determination of whether an interrogation is coercive must be made on the case by case analysis set out in *Blue Flash Express*, 109 NLRB 591 (1954). In my decision I noted that on Thursday, January 15, 2004, the two apprentices were questioned to obtain clarification regarding what they had actually signed and that Carter explained that what they had signed related to the apprenticeship program. I found that, on January 16, 2004, "[w]hatever Canada said prompted her [Miller] to speak with an apprentice regarding what he had actually signed," and that, in that circumstance, the interrogation was not coercive. *Electric by Miller*, supra, JD slip op. at 5. The foregoing finding was predicted upon a full record and credibility determinations. In the overall context of threats of closure and an unlawful termination, the foregoing discrete allegation of interrogation was not significant. *Golden Stevedoring Co.*, 343 NLRB No. 18 (2004).

My recommended dismissal of the allegation relating to revocation of cellular telephone privileges was predicated upon crediting Miller that the Company required that cellular telephones be left at the facility for charging. *Electric by Miller*, supra, JD slip op. at 6. In view of my crediting Miller regarding company policy, I did not address Carter's testimony at page 74 of the transcript, lines 17–24, testimony which I did not credit, that he had the cellular telephone for 10 days.

My dismissal of the allegation that the Respondent discriminatorily refused to hire Brent Sloan was also based upon credibility resolutions and the entire record. In my decision, I dealt with the failure to hire Sloan in summary fashion because the record established that there was no work available on the Thursday and Friday immediately following Sloan's agreement to work on an as needed basis if given sufficient notice and that, following Carter's discriminatory discharge, the Respondent was unaware of how to contact Sloan. Critical to the foregoing determination that the Respondent was unaware of how to contact Sloan was my crediting Miller's testimony that she did not recall Sloan's name and Carter's admission that he did not give Miller Sloan's address or telephone number. Although Carter testified that he gave Sloan's name to Miller, she testified that Carter never stated Sloan's name. I made no credibility resolution as to whether Carter had done so, but, crediting Miller, I found that, even if Carter did name Sloan, "Miller did not recall Sloan's name and Carter did not provide Sloan's address or telephone [number]." Id., JD slip op. at 2.

If, contrary to her denial, I had found that Miller did recall the name of Brent Sloan, the factual situation would have been one in which an employer "knows of potential employees who are interested in employment and, because of antiunion animus, prevents those employees from applying for a position." *David Allen Co.*, 335 NLRB 783, 785 (2001), citing *Service Operation Systems*, 272 NLRB 1033 (1984). Miller's statement that she was closing when she ejected Canada from her office on January 16, made any immediate action by Sloan futile.

Because of the case specific facts relating to Sloan, it was unnecessary to set out the analytical framework prescribed in *FES*, 331 NLRB 9 (2000), i.e. (1) that the respondent had concrete plans to hire, (2) that the applicant had the experience relevant to the position, and (3) that antiunion animus contributed to the decision not to hire the applicant. The Respondent did have concrete plans to hire a journeyman on an as needed basis and Sloan, a journeyman electrician, had the experience relevant to the position. Miller, who was aware that Carter was contacting a journeyman electrician, asked Harrell "whether the electrician [Sloan] was 'union'" and "Harrell answered that he did not know, but assumed that he was." *Electric by Miller* , supra, JD slip op. at 2. Miller's threats and termination of Carter establish the Respondent's animus towards union affiliated employees. Thus, although not stated in my decision, the General Counsel established a prima facie case. When the General Counsel establishes a prima facie case, his position is "substantially justified." *SME Cement, Inc.*, 267 NLRB 763 fn. 1 (1983). Because I found that the Respondent was unaware of how to contact Sloan, the failure to hire him could not be attributed to antiunion animus, and the prima facie case was rebutted. If I had not credited Miller's testimony that she did not recall Sloan's name, the General Counsel's prima facie case would not have been rebutted.

There was no work available on Thursday or Friday, January 15 and 16. *Electric by Miller*, supra, JD slip op. at 5. Thereafter there were positions that Sloan could have filled. If I had found that Miller recalled Brent Sloan's name, there is no reason that Miller, having continued to operate after making the false representation that she was closing the Company, would not have, in the absence of antiunion animus, sought to contact Sloan who she knew was willing to work. Carter informed Harrell that Sloan was willing to work with "as much notice as we could give him." Miller, shortly thereafter, told Carter not to have the electrician "come up the next day." (Tr., p. 76, LL. 8–18.) On January 22, 2004, Miller hired Levi Kirkwood and

Leon Jackson. Id., J.D. slip op. at 5. Jackson quit on January 30. (GC Exh. 8.) Another journeyman, Carter, was hired on February 20, 2004, and he worked until April 1, 2004. (GC Exh. 10.) Sloan was fully qualified to fill those positions.

The Respondent, in its Opposition, argues that I "advised the General Counsel during the hearing that [the] claim [relating to Sloan] should be abandoned." The transcript, at page 186, reflects that counsel for the Respondent moved to dismiss the allegation relating to Sloan, and I informed him, at page 187, lines 1–6, that I was not going to issue a bench decision and to brief the issue. Thereafter, at page 188, lines 17 and 18, I observed that the General Counsel "has got a very, very thin reed upon which to base that allegation." My assessment of the strength of the General Counsel's case did not constitute advice that the claim should be abandoned. I neither ask nor advise parties to abandon claims. I grant motions to dismiss when the General Counsel fails to present a prima facie case. The General Counsel presented a prima facie case. I did not direct the General Counsel to abandon the allegation. I directed both parties to brief the issue.

III. CONCLUDING FINDINGS

My determination that the Respondent did not violate the Act with regard to the foregoing discrete allegations that were litigated was made after consideration and analysis of the evidentiary facts and credibility resolutions. The General Counsel was fully justified in proceeding against this Respondent. My recommended dismissal of the foregoing allegations was predicated upon the entire record and placing more weight upon particular portions of testimony, ascribing more significance to some facts than to others, and drawing inferences from that testimony and those facts. The Board has held that "[s]uch weighing of facts and drawing of inferences is not the General Counsel's province in the investigative stage of a proceeding. The weighing of various explanations . . . and the drawing of inferences from the testimony are, in the first instance, the exclusive province of the judge; they require submission of the case to the fact finding process of litigation." *Lathers Local 46 (Building Contractors)*, 289 NLRB 505, 508 (1988).

I concluded that the Respondent violated the Act by its threats of closure, a hallmark violation of the Act, by falsely announcing that it had closed in order to effectuate the discharge of employee Carter, and by discharging Carter pursuant to that false announcement because of his union activities. I did not find that there was no threat of futility; rather I found that this allegation was subsumed in the more serious hallmark violation of the threats of closure. I found that the circumstances in which the interrogation occurred did not establish that it was coercive, and, crediting Miller, I found that the instruction that Carter return his cellular telephone was consistent with Company policy. I credited Miller's claim that she did not recall Brent Sloan's name which, coupled with Carter's failure to give her his address or telephone number, established that the Respondent was unaware of how to contact him, thereby rebutting the General Counsel's prima facie case that the Respondent failed to hire him because of his union affiliation.

The General Counsel's position with regard to the withdrawn allegations was substantially justified up until the witness who would testify in support of those allegations advised that he would not participate in the proceeding. The General Counsel acted with due diligence in withdrawing those allegations within 2 weeks of receiving the foregoing notification from the uncooperative witness which was more than a month before the scheduled hearing. The Respondent's animus was undisguised and resulted in threats of closure and the termination of Carter pursuant to the false announcement of closure. I find with regard to the entire case, including the withdrawn allegations, that the litigation of this case was "substantially justified . . . on the basis of the administrative record, as a whole . . . ." 5 U.S.C. § 504(a)(1). The General Counsel's prosecution of this case had a reasonable basis on the facts and the law. In view of this, I shall recommend that the General Counsel's motion to dismiss be granted and that the Respondent's application for an award of fees and expenses be denied.[2]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[3]

ORDER

The General Counsel's motion to dismiss Respondent's Application for Reimbursement of Fees and Expenses under EAJA is granted, and the Respondent's application is denied.

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[2] In view of the foregoing, it is not necessary to address any other issues, including the amount of any award, the eligibility of the Respondent for an award, and the Respondent's motion to withhold confidential financial information. The financial data submitted by the Respondent shall remain under seal pending the outcome of this matter. As amended, the Respondent's application claims that 66 percent of the attorney fees and 50 percent of its expenses relate to the allegations that were withdrawn more than a month prior to the hearing or dismissed. The Respondent plead multiple defenses in its answer and, in its brief, argued that John R. Carter was a supervisor and that the Union sought to place "union agents in managerial positions" and thereby "entrap the Employer." The decision rejected both of those defenses.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.